

## THE PATRIA POTESTAS.

[Written for THE CONSERVATIVE by Frank Heller].

In ancient Rome the status of a person was determined by the relation such person sustained to his government and to the family to which he belonged. And, firstly, persons were classified into two great divisions, free and slave; secondly, whether a person was or was not under the power of the father, the patria potestas, the subject of this paper.

## Definitions.

In order to get a clearer conception of the terms "patria potestas" or paternal power, and "pater familias" it is not only proper but necessary to describe briefly the artificial and peculiar organization of the Roman family, which has been justly termed to be the greatest moral phenomenon of the human race. Like many other social, moral and political phenomena of the race, the family has its origin in the religious belief of primitive man. But bear in mind that the term "family" in this connection means a great deal more than it does in the modern sense. It not only includes husband and wife and their children, grandchildren and great grandchildren, but houses, lands, graveyards, money, slaves, clients; and might comprise several thousand beings, the whole being a juridical entity subject, and the title to which, was exclusively vested in the "pater familias," who belonged to no one but himself. It follows that the term "pater familias," or father, can not here be used in its modern sense. The "pater" might be a bachelor, a child, or even a woman. Persons were or were not subject to paternal power; there was no middle ground.

## In The Morning of the World.

In the long, long time ago, when consciousness first dawned upon the human mind religion was man's whole existence. His religion was of a simple kind, near at hand and most readily understood. It seems that from the earliest times man has believed in a double existence of himself, once in the body and once in the spirit. He has believed in the worship of the dead. The soul, or ghost, or manes, or whatever it might be called, was buried with the body in the tomb, and the dead became a god to his descendants. In order that the manes should enjoy perennial happiness in the spirit world it had to be propitiated at his tomb with offerings of delicatessen and fine drinks. The manes lived in the tombs under the ground. It was subject to like frailties and like wants as the living. The repasts of oil, wine, milk, honey, etc., were taken to the tomb for the exclusive use of the dead. The soul was not rewarded or punished for acts committed during life, but its happiness depended solely upon

whether or not its descendants rendered appropriate offerings at its tomb. These offerings were made once a year, or oftener in times of trouble and tribulation. Woe unto the disembodied soul that had no sacrifices rendered in its behalf! The person who died without a descendant to attend to this matter was destined to become a malignant, anarchic spirit, roaming aimlessly through the spirit world, condemned to everlasting hunger, misery and woe. On the other hand an ungrateful descendant was cursed with a like affliction by the outraged manes. It is apparent that in ancient days the lot of a bachelor was not a happy one.

## Home Altars.

In the house, or dwelling place, of every Aryan family there was an altar upon which it was the duty of the "pater" to keep forever burning the sacred fire. In the evening the fire was banked with ashes to keep the embers alive till morning. The fire was symbolical of purity, divinity and immortality. It must never go out, because that meant extinction of the family. An extinguished fire and an extinguished family were synonymous terms. Around this altar of domestic religion were performed all the ceremonies and sacred mysteries that made up the secret religion of the family. Here the marriage rites were performed; here the newborn infant was initiated and formally accepted by the father. The Hindoos, Greeks and Romans, perhaps the whole Aryan race, professed this religious belief and practiced these family rites.

The father, during life, was the exclusive master of ceremonies and custodian of the family religion. This office with all its concomitants descended to the first born in the male line only. "This is claimed to be based on the idea that generation was entirely due to males. The father alone possessed the reproductive power, the mysterious principle of existence, and transmitted the spark of life." Females had ancestors only through their fathers or their husbands, but were incapable of having descendants. Upon marriage the wife's former relations, worship and religion were utterly extinguished by her adoption of those of her husband. Henceforth the gods of her father were her gods no more. She had abjured her religion, practiced other formulas and other rites.

## Perpetuation of a Race.

In order to perpetuate the family there sprung into being artificial methods to accomplish this end. In case a male found himself free from the paternal power which always happened if the father of the second generation died before the father of the first and the third generation, he had the choice to extinguish himself to become a malevolent demon after death, or start a new family with an independent god, or be-

come a member of an existing family. This latter process was called *arrogation*. Again, on the other hand, if a father had no male issue he could adopt any number of males from other families into his own. This process was called *adoption*. The distinction between the two is this: *Arrogation* is where a male, not under power, places himself under power; and *adoption* is where a male under power simply exchanges families. In both cases the change and legal effect of the process was as complete a transformation as that of a woman becoming a wife. Women could not adopt. The test of relationship was not who is his father, mother, brother or sister, but to whose family does he or she belong? Whose religion does he or she profess? Identity of worship was the sole test of succession and family relation. All those who could trace their descent through a direct line of males to a common ancestor, without regard to consanguinity, were called *agnates*; all others *cognates*. The father was the high priest of the family. He kept the sacred fire going, said the prayers and uttered the fixed formulas at the altar. He was likewise the chief executive and supreme judge; the source of truth, of authority and of law. He was the whole thing—the It.

The old religion established a difference between the elder and younger sons. "The oldest," says the sacred book of the Aryans, "was begotten for the accomplishment of the duty due the ancestors; the others are the fruit of love;" and "the right of pronouncing the prayers belongs to that son who came into the world first." When the father was placed into the family tomb of his ancestors and became a god the first-born son became the successor to guide the destiny of the family. In the philosophy of this institution the members of a family exist solely to perpetuate the same. One father had a temporary charge of it, a temporary administration of all its affairs, and on passing away was succeeded by another. The family in theory was expected never to die; it resembled very much the modern corporation. All property belongs to the family as such and was unalienable; and over all ruled the epitome of despotism, the father.

## Paternal Power.

The father's power as to his daughter became extinct, in later days, when she became a vestal virgin; or when he caused her to become an outcast and a wanton; and as to his son, when the father submitted him to exposure, or sold him three times, or was emancipated, or became a pontiff or a bishop. Illegitimate children could never become members of a family; they could not become pater familias; they had no ancestors and were preordained to everlasting damnation. In early times all the property acquired by the son was for the be-